

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

EVAN BROWN, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

v.

PAPA MURPHY'S HOLDINGS, INC. and
WELDON SPANGLER,

Defendants.

Case No. 19-cv-05514-BHS

[PROPOSED] FINAL JUDGMENT AND
ORDER OF DISMISSAL WITH
PREJUDICE

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Case No. 19-cv-5514-BHS

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1 This matter came before the Court for hearing pursuant to the Preliminary Approval Order
2 dated January 11, 2022, on the application of the Settling Parties for approval of the Settlement
3 set forth in the Stipulation of Settlement dated November 29, 2021 (the “Stipulation”).

4 WHEREAS, this Order of Dismissal is “with prejudice”;

5 WHEREAS, due and adequate notice has been given to the Settlement Class as required
6 in the Preliminary Approval Order;

7 WHEREAS, the Court conducted a hearing on May 2, 2022, at 11:00 a.m. to consider,
8 among other things: (i) whether the terms and conditions of the Settlement are fair, reasonable,
9 and adequate, and should therefore be approved, and (ii) whether a judgment should be entered
10 dismissing the Litigation with prejudice as against the Defendants;

11 WHEREAS, consistent with the Preliminary Approval Order, all Settlement Class
12 Members had the opportunity to exclude themselves from the proposed Settlement Class; to
13 object to the proposed Settlement; and to be heard with regard to the proposed Settlement,
14 including by appearing and speaking at the hearing held on May 2, 2022; and

15 WHEREAS, the Court has considered all papers filed and proceedings held herein and
16 otherwise is fully informed in the premises, and good cause appearing;

17 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

18 1. This Final Judgment and Order of Dismissal with Prejudice (“Order and Final
19 Judgment”) incorporates by reference the definitions in the Stipulation, and all terms used herein
20 shall have the same meanings as set forth in the Stipulation, unless otherwise set forth herein.

21 2. This Court has jurisdiction over the subject matter of the Litigation and over all
22 Settling Parties to the Litigation, including all Settlement Class Members.

23 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby
24 affirms its determinations in the Preliminary Approval Order and finally certifies for purposes of
25 settlement only: (i) a Settlement Class defined as all record holders and all beneficial holders of
26 Papa Murphy’s common stock who purchased, sold, or held such stock during the period from

and including April 25, 2019, the date of the Tender Offer and the date of filing of the Schedule 14D-9, through and including May 22, 2019, the Expiration Time, including any and all of their respective predecessors, successors, trustees, executors, administrators, estates, legal representatives, heirs, assigns and transferees; (ii) Monteverde & Associates PC is certified as Lead Counsel and Breskin, Johnson & Townsend PLLC is certified as Liaison Counsel; and (iii) Lead Plaintiff is certified as the class representative. Excluded from the Settlement Class are: (i) Defendants; (ii) the Directors; (iii) each Supporting Stockholder, as that term is defined in the Recommendation Statement, who entered into a Tender and Support Agreement in connection with the Tender Offer; (iv) members of the immediate families of each of the Defendants, Directors, and Supporting Stockholders; (v) any entity in which any of the Defendants, Directors, or Supporting Stockholders has a controlling interest; (vi) the legal representatives, heirs, successors, administrators, executors, and assigns of any of the Defendants, Directors, and Supporting Stockholders; and (vii) any Persons or entities who properly exclude themselves by filing a valid and timely request for exclusion.

4. For purposes of settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order and finds that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) Settlement Class Members are so numerous that joinder of all Settlement Class Members in the class action is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of the Lead Plaintiff are typical of the claims of the Settlement Class; (d) Lead Plaintiff and his counsel have fairly and adequately represented and protected the interests of the Settlement Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering, (i) the interests of the Settlement Class Members in individually controlling the prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by the Settlement Class Members, (iii) the desirability or

1 undesirability of concentrating the litigation of these claims in this particular forum, and (iv) the
2 difficulties likely to be encountered in the management of the class action.

3 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby
4 approves the Settlement set forth in the Stipulation and finds that the Settlement is, in all respects,
5 fair, reasonable, and adequate to the Settlement Class.

6 6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court finds that
7 the Settlement is fair, reasonable, and adequate as to each of the Settling Parties, and that the
8 Settlement set forth in the Stipulation is hereby finally approved in all respects, and the Settling
9 Parties are hereby directed to perform its terms.

10 7. Accordingly, the Court authorizes and directs implementation of the terms and
11 provisions of the Stipulation, as well as the terms and provisions hereof. The Court hereby
12 dismisses with prejudice and without costs, the Litigation and all claims contained therein, and
13 the Released Claims, defined as any and all claims, rights and causes of action, duties, obligations,
14 demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages and
15 liabilities, whether known or unknown, contingent or non-contingent, derivative or direct, or
16 suspected or unsuspected, including any claims arising under federal or state statutory or common
17 law or any other law, rule or regulation, whether foreign or domestic, that have been asserted,
18 could have been asserted, or could be asserted in the future against defendants Papa Murphy's
19 and Weldon Spangler ("Defendants"), MTY Food Group Inc. ("MTY"), and any and all of their
20 related parties, including, without limitation, any and all of their current or former parents,
21 subsidiaries, predecessors, successors, affiliates, divisions, investment funds, joint ventures and
22 general or limited partnerships, and each of their respective current or former officers, directors,
23 trustees, partners, members, contractors, auditors, principals, agents, managing agents,
24 employees, attorneys, accountants, investment bankers, financial advisors, including without
25 limitation North Point Advisors LLC, underwriters, insurers in their capacities as such, as well as
26 each of the Defendants' immediate family members, heirs, executors, personal or legal

representatives, estates, beneficiaries, predecessors, successors and assigns (collectively, “Defendants’ Released Parties”), that arise out of or relate in any way to: (i) the Action and the allegations in the Action, (ii) the Tender Offer; or (iii) the Recommendation Statement. Notwithstanding the aforementioned, the following claims are explicitly excluded: all claims (1) related to the enforcement of this Settlement, and (2) between Defendants or Defendants’ Released Parties, on the one hand, and their respective insurers on the other.

8. Upon the Effective Date hereof, and as provided in the Stipulation, without further action by anyone, Lead Plaintiff and each and every Settlement Class Member, in his, her, or its capacity as a purchaser, seller, or holder of Papa Murphy’s stock, and anyone claiming through or on behalf of any of them, shall be deemed to have, and by operation of this Order and Final Judgment shall have, fully, finally, and forever resolved, discharged, relinquished, released, waived, settled, and dismissed with prejudice any and all of the Released Claims (including, without limitation, Unknown Claims) against Defendants and each and all of Defendants’ Released Parties, regardless of whether a Settlement Class Member executes and delivers a Proof of Claim and Release, except that claims relating to the enforcement of the Settlement shall not be released.

9. Upon the Effective Date hereof, and as provided in the Stipulation, without further action by anyone, Defendants shall be deemed to have, and by operation of this Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Lead Plaintiff, each and all of the Settlement Class Members, and Plaintiff’s Counsel from all Plaintiff’s Released Claims (including, without limitation, Unknown Claims), and shall forever be enjoined from prosecuting such claims.

10. Upon the Effective Date hereof, and as provided in the Stipulation, without further action by anyone, Lead Plaintiff and each and every Settlement Class Member, in his, her, or its capacity as a purchaser, seller, or holder of Papa Murphy’s stock, and anyone claiming through or on behalf of any of them, shall be forever barred and enjoined from commencing, instituting,

1 asserting, maintaining, enforcing, aiding, prosecuting, or continuing to prosecute any action or
 2 proceeding in any forum (including, but not limited to, any state or federal court of law or equity,
 3 any arbitral forum, any tribunal, administrative forum, or the court of any foreign jurisdiction, or
 4 any other forum of any kind), any and all of the Released Claims (including, without limitation,
 5 Unknown Claims), against Defendants and each and all of Defendants' Released Parties,
 6 regardless of whether such Settlement Class Member executes and delivers a Proof of Claim and
 7 Release, except that claims relating to the enforcement of the Settlement shall not be released.

8 11. Upon the Effective Date hereof, and as provided in the Stipulation, without further
 9 action by anyone, Lead Plaintiff and each and every Settlement Class Member, in his, her, or its
 10 capacity as a purchaser, seller, or holder of Papa Murphy's stock, and anyone claiming through
 11 or on behalf of any of them, shall covenant or be deemed to have covenanted not to sue any of
 12 Defendants and Defendants' Released Parties with respect to any and all Released Claims
 13 (including, without limitation, Unknown Claims).

14 12. In accordance with the PSLRA as codified at 15 U.S.C. § 78u-4(f)(7)(A), (a) all
 15 obligations of any Defendant or Defendants' Released Party to any Settlement Class Member
 16 arising out of the Litigation are discharged, and (b) any and all claims for contribution arising out
 17 of the Litigation or any of the Released Claims (i) by any person or entity against Defendants or
 18 any of the Defendants' Released Parties, and (ii) by Defendants or any of the Defendants'
 19 Released Parties against any person or entity, other than as set out in 15 U.S.C. § 78u-
 20 4(f)(7)(A)(ii), are hereby permanently barred, extinguished, discharged, satisfied, and
 21 unenforceable.

22 13. The terms of the Stipulation and of this Order and Final Judgment shall be forever
 23 binding on Lead Plaintiff, all other Settlement Class Members (regardless of whether or not any
 24 individual Settlement Class Member submits a Proof of Claim and Release or seeks or obtains a
 25 distribution from the Net Settlement Fund), and Defendants, as well as their respective, heirs,
 26 executors, administrators, predecessors, successors, and assigns.

1 14. The Escrow Agent shall maintain the Settlement Fund in accordance with the
2 requirements set forth in the Stipulation. Defendants and Defendants' Released Parties shall have
3 no liability, obligation, or responsibility whatsoever for the administration of the Settlement or
4 disbursement of the Net Settlement Fund.

5 15. The Notice given to the Settlement Class: (a) was implemented in accordance with
6 the Preliminary Approval Order entered on January 11, 2022, (b) was the best notice practicable
7 under the circumstances to all Persons entitled to notice of these proceedings and of the matters
8 set forth therein, including the proposed Settlement set forth in the Stipulation, (c) was reasonably
9 calculated under the circumstances to apprise Settlement Class Members of (i) the pendency of
10 the Litigation; (ii) the effect of the proposed Settlement (including the releases contained therein);
11 and (iii) their right to object to any aspect of the proposed Settlement, exclude themselves from
12 the Settlement Class, and/or appear at the Final Approval Hearing, (d) was reasonable and
13 constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice
14 of the proposed Settlement, and (e) fully satisfied the requirements of Rule 23 of the Federal
15 Rules of Civil Procedure, the requirements of due process, the requirements of the PSLRA, and
16 all other applicable law and rules. The Court further finds that the notice provisions of the Class
17 Action Fairness Act, 28 U.S.C. § 1715, were fully discharged. Therefore, it is determined that
18 all members of the Settlement Class are bound by the Order and Final Judgment herein.

19 16. Separate orders shall be entered regarding the proposed Plan of Allocation and Lead
20 Counsel's motion for attorneys' fees and expenses as allowed by the Court. Any plan of
21 allocation submitted by Lead Counsel or any order entered regarding any attorneys' fee and
22 expense application shall in no way disturb or affect this Order and Final Judgment and shall be
23 considered separate from this Order and Final Judgment.

24 17. Neither this Order and Final Judgment, the Stipulation, the Supplemental
25 Agreement, nor any of their terms or provisions, nor any of the negotiations, discussions,
26 proceedings connected thereto, nor any act performed or document executed pursuant to or in

1 furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as
 2 an admission of, or evidence of, the validity of any of the allegations in the Litigation or of the
 3 validity of any Released Claim, or of any wrongdoing or liability of any Defendants or
 4 Defendants' Released Parties; or (b) is, or shall be deemed to be, or shall be used as an admission
 5 of any fault or omission of any Defendants or Defendants' Released Parties in any statement,
 6 release, or written documents issued, filed, or made; or (c) is or may be deemed to be or may be
 7 used as an admission of, or evidence of, any fault, liability, wrongdoing, negligence, or omission
 8 of any Defendants or Defendants' Released Parties in any civil, criminal, or administrative
 9 proceeding in any court, arbitration proceeding, administrative agency, or forum or tribunal in
 10 which any Defendants or Defendants' Released Parties are or become parties; or (d) is or may be
 11 deemed to be or may be used as an admission or evidence that any claims asserted by Lead
 12 Plaintiff lacked merit or that the amount recoverable was not greater than the Settlement Amount,
 13 in any civil, criminal, or administrative proceeding in any court, administrative agency, or other
 14 tribunal. Defendants, Defendants' Released Parties, Lead Plaintiff, Settlement Class Members,
 15 and their respective counsel may file the Stipulation and/or this Order and Final Judgment in any
 16 action that may be brought against them in order to support a defense or counterclaim based on
 17 principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or
 18 reduction or any other theory of claim preclusion or issue preclusion or similar defense or
 19 counterclaim. The Settling Parties may file the Stipulation and/or this Order and Final Judgment
 20 in any proceedings that may be necessary to consummate or enforce the Stipulation, the
 21 Settlement, or the Order and Final Judgment.

22 18. Without affecting the finality of this Order and Final Judgment in any way, this
 23 Court hereby retains continuing exclusive jurisdiction over: (a) implementation of this Settlement
 24 and any award or distribution of the Settlement Fund, including interest earned thereon; (b)
 25 disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees
 26

1 and expenses and interest in the Litigation; and (d) all Settling Parties hereto for the purpose of
 2 construing, enforcing, and administering the Stipulation.

3 19. The Court finds that during the course of the Litigation, the Settling Parties and
 4 their respective counsel at all times complied with the requirements of Federal Rule of Civil
 5 Procedure 11.

6 20. In the event that the Settlement does not become effective in accordance with the
 7 terms of the Stipulation, or the Effective Date does not occur, or in the event that the Settlement
 8 Fund, or any portion thereof, is returned to the Defendants as required under the terms of the
 9 Stipulation, then this Order and Final Judgment shall be rendered null and void to the extent
 10 provided by and in accordance with the Stipulation and shall be vacated and, in such event, all
 11 orders entered and releases delivered in connection herewith shall be null and void to the extent
 12 provided by and in accordance with the Stipulation.

13 21. Without further approval from the Court, the Settling Parties are hereby authorized
 14 to agree and to adopt such amendments or modifications of the Stipulation or any exhibits
 15 attached thereto to effectuate the Settlement that: (i) are not materially inconsistent with this
 16 Order and Final Judgment; and (ii) do not materially limit the rights of Settlement Class Members
 17 in connection with the Settlement. Without further order of the Court, the Settling Parties may
 18 agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

19 22. The Court directs immediate entry of this Order and Final Judgment by the Clerk
 20 of the Court.

21
 22 IT IS SO ORDERED.

23 DATED: _____

24 _____
 25 THE HONORABLE BENJAMIN H. SETTLE
 26 UNITED STATES DISTRICT JUDGE